

SUPREME COURT OF MONTANA

State of Montana v. Rozell Roland Cook

364 Mont. 161, 2012 MT 34 (2012) · No. DA 11-0058 · Decided February 14, 2012

SUMMARY

The Montana Supreme Court reviewed the revocation of Rozell Roland Cook's suspended sentence for alleged violations involving residence and sex-offender treatment conditions. The Court held that State v. Stiffarm applied prospectively and that the District Court had authority to consider the revocation petition; it also upheld the revocation despite Cook's lack of willful noncompliance. The Court affirmed most sentencing conditions but remanded to strike an unavailable GPS-monitoring requirement.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	Chief Justice Mike McGrath; Mike McGrath; James C. Nelson; Beth Baker; Jim Rice; Michael E. Wheat
JURISDICTION	Montana
DECIDED	February 14, 2012
DOCKET	DA 11-0058
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Cook appealed the District Court's order revoking the suspended portion of his sentence and imposing a revocation sentence with additional conditions.
STANDARD OF REVIEW	Revocation of a suspended sentence is reviewed for abuse of discretion and whether supported by a preponderance of the evidence. The district court's authority to take a specific action is reviewed de novo. A sentence imposed after revocation is reviewed for legality only when the defendant was sentenced to more than one year of actual incarceration.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential.
PARTIES	Rozell Roland Cook v. State of Montana

TOPICS

probation

sentencing

criminal procedure

due process

statutory interpretation

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the District Court had statutory authority to consider and grant a petition to revoke Cook's suspended sentence when the petition was filed before the period of suspension began.
2. Whether the District Court abused its discretion or violated due process by revoking the suspended sentence for violations that Cook argued were unwillful and could have been addressed through alternatives to incarceration.
3. Whether the revocation sentence imposed illegal or excessively punitive conditions, including restrictions on association, a 1,500-foot residential exclusion, and GPS monitoring.

HOLDINGS

1. State v. Stiffarm's interpretation of § 46-18-203(2), MCA (1999), applies prospectively to cases on collateral review; therefore, the District Court had authority to consider and grant the State's petition even though it was filed before the suspended sentence commenced.
2. The District Court did not abuse its discretion or violate due process by revoking Cook's suspended sentence. For nonfinancial probation conditions related to rehabilitation or public protection, the violation need not necessarily be willful, particularly where the circumstances frustrate the purposes of probation and the court determines that no suitable alternative to incarceration exists.
3. A revocation sentence may impose modified or additional conditions when authorized by statute, and the legality of the sentence is assessed by considering the substance of the conditions and the overall punishment compared with the original sentence. The challenged restrictions on association and residence were reasonably related to rehabilitation and protection of society, but the unavailable GPS-monitoring condition was illegal and had to be stricken.

KEY QUOTATIONS

“A revocation proceeding is a “purely administrative action designed to determine whether a parolee or probationer has violated the conditions of his parole or probation, not a proceeding designed to punish a criminal defendant for violation of a criminal law.”” (§ 16)

“Accordingly, we hold that Stiffarm applies prospectively to cases on collateral review in Montana courts and therefore conclude that the District Court did not lack authority to revoke Cook’s suspended sentence.” (§ 20)

“Whether Cook’s violations were or were not voluntary is not dispositive.” (§ 30)

“This test is satisfied so long as the condition is reasonably related to the objectives of rehabilitation and protection of the victim and society, and has a correlation to the underlying offense or the offender.” (§ 35)

“This service is currently unavailable in Montana. As such, the State concedes the issue as an impossible condition.” (¶ 36)

FACTUAL BACKGROUND

Cook's 1999 sentence for two felony sexual assaults included a suspended portion conditioned on supervision, counseling, sex-offender treatment by an MSOTA-recognized therapist, and residence at least 1,500 feet from specified locations. As Cook approached release after nearly ten years in custody, proposed housing and treatment arrangements were rejected or became unavailable because of the residency and treatment conditions. The State petitioned to revoke the suspension two days before its scheduled commencement, and the District Court later found violations of the supervision and residence conditions and of a counseling-related condition. The court determined that Cook remained a high-risk sex offender and that no alternative to incarceration was suitable, but imposed a GPS-monitoring condition that was unavailable in Montana.

PROCEDURAL HISTORY

Cook pleaded guilty through an Alford plea to two felony sexual-assault charges in 1999 and received concurrent twenty-year sentences with ten years suspended. Shortly before his scheduled release from custody, the State petitioned to revoke the suspended sentence based on alleged violations involving supervision, treatment, and residence. The District Court revoked the suspension, imposed concurrent ten-year DOC commitments with five years suspended, and added conditions. The Montana Supreme Court affirmed the revocation and most conditions, but remanded to strike the unavailable GPS-monitoring requirement.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand to the District Court to strike the illegal GPS-monitoring requirement. The opinion's conclusion also states that Condition 15 in the revocation order is reversed, although the analysis holds that the 1,500-foot residential restriction has a sufficient nexus to rehabilitation and public protection and identifies the GPS requirement as the illegal condition.

CASES CITED

- N.C. v. Alford, 400 U.S. 25, 91 S. Ct. 160 (1970)
- State v. Stiffarm, 2011 MT 9, 359 Mont. 116, 250 P.3d 300
- State v. Goff, 2011 MT 6, 359 Mont. 107, 247 P.3d 715
- State v. Burke, 2005 MT 250, 329 Mont. 1, 122 P.3d 427
- State v. Bullplume, 2011 MT 40, 359 Mont. 289, 251 P.3d 114
- State v. Reichmand, 2010 MT 228, 358 Mont. 68, 243 P.3d 423
- State v. Haagenon, 2010 MT 95, 356 Mont. 177, 232 P.3d 367
- State v. Egelhoff, 272 Mont. 114, 900 P.2d 260 (1995)

- Shriro v. Summerlin, 542 U.S. 348, 124 S. Ct. 2519 (2004)
- Gratzner v. Mahoney, 2006 MT 282, 334 Mont. 297, 150 P.3d 343
- State v. LeDeau, 2009 MT 276, 352 Mont. 140, 215 P.3d 672
- State v. Morrison, 2008 MT 16, 341 Mont. 147, 176 P.3d 1027
- State v. Tirey, 2010 MT 283, 358 Mont. 510, 247 P.3d 701
- State v. Lee, 2001 MT 176, 306 Mont. 173, 31 P.3d 998
- Bearden v. Georgia, 461 U.S. 660, 103 S. Ct. 2064 (1983)
- Black v. Romano, 471 U.S. 606, 105 S. Ct. 2254 (1985)
- State v. Senn, 2003 MT 52, 314 Mont. 348, 66 P.3d 288
- State v. Williams, 1999 MT 240, 296 Mont. 258, 993 P.2d 1
- State v. Muhammad, 2002 MT 47, 309 Mont. 1, 43 P.3d 318
- State v. Guill, 2011 MT 32, 359 Mont. 225, 248 P.3d 826
- State v. Edwards, 2011 MT 210, 361 Mont. 478, 260 P.3d 396
- State v. Tracy, 2005 MT 128, 327 Mont. 220, 113 P.3d 297
- State v. Striplin, 2009 MT 76, 349 Mont. 466, 204 P.3d 687
- Formicove, Inc. v. Burlington N., 207 Mont. 189, 673 P.2d 469 (1983)